INTERIM BROWNFIELDS MANUAL

August 7, 2003

Contact Information

Should you have any questions or need further assistance with this manual, please contact:
Chris Evans (804) 698-4336
cmevans@deq.state.va.us

Disclaimer
This document provides procedural guidance to the DEQ Waste staff. This document is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying applicable laws and the implementation of regulations on the basis of site-specific facts.

TABLE OF CONTENTS

SECTION 1

LIABILITY COMFORT AT BROWNFIELD SITES

Liability Comfort at Brownfield Sites

I. INTRODUCTION

The Commonwealth of Virginia supports brownfield redevelopment. Returning contaminated or potential contaminated property to productive use is the intelligent thing to do for businesses and the environment. To make this happen, Virginia has enacted laws that establish supportive programs and provide incentives to persons and businesses to successfully undertake brownfield redevelopment.

At the Virginia Department of Environmental Quality ("DEQ"), there are several programs and tools that support these efforts. To address liability issues, DEQ's Brownfield Program provides a process for non-enforcement containment and clean-up actions, penalty immunity and mitigation in enforcement situations, and limits on liability for certain owners. These mechanisms are:

- Voluntary Remediation Program ("VRP")
- Statutory Limited Liability
- Limited Liability through Director Determination
- Brownfield Amnesty Program for Voluntary Disclosure
- Voluntary Environmental Assessment Immunity
- Civil Charge Mitigation For Self-Disclosed Violations
- Comfort Letters
- EPA Memorandum Of Agreement (CERCLA)
- Federal Enforcement Bar

The VRP, Brownfield Amnesty Program, and the limited liability processes are part of a law called the Brownfield Restoration and Land Renewal Act (Code §§ 10.1-1230 through 10.1-1237). Elsewhere, Code § 10.1-1199 provides immunity for certain voluntary environmental assessments, and DEQ provides for civil charge mitigation in its Enforcement Manual, which models its provisions on a similar EPA policy. To assist individuals involved with brownfield sites, DEQ may also issue comfort letters to address routine situations. These letters provide site-specific liability comfort that may assist in private party negotiations for the sale, financing and redevelopment of brownfield sites.

DEQ encourages owners of brownfield sites to discuss their properties with DEQ staff and avail themselves of the technical and marketing resources available to assist in the sale and/or redevelopment of these properties. DEQ's Brownfield/Land Renewal Program may be able to assist with brownfield assessments, marketing of properties, and facilitating technical and liability resolutions to assist in returning the property to productive use. DEQ also encourages parties to enter the VRP and complete any necessary remediation to eliminate any uncertainties and exercise due care regarding a release or potential release.

II. OVERVIEW OF PROGRAMS AFFECTING LIABILITY

This section describes DEQ's key programs and tools, identified above, pertaining to liability and brownfield redevelopment. These programs and tools vary depending on the site and the circumstances that may cause parties to seek some level of assurance regarding their liability.

A. VOLUNTARY REMEDIATION PROGRAM

DEQ's Voluntary Remediation Program is a non-enforcement cleanup program that provides a formal mechanism for DEQ oversight while providing flexibility to the participant. The VRP uses a risk-based approach that provides reasonable cleanup goals and allows for institutional and engineering controls to be considered as remediation approaches. As discussed below, Virginia's VRP is the subject of a Superfund Memorandum of Agreement with the U.S. Environmental Protection Agency ("EPA") that provides a high degree of assurance that any site in the VRP will not be the subject of any federal interest. The VRP also has two critical determinations that can provide significant liability relief to participants: the eligibility determination and the Certificate of Satisfactory Completion of Remediation. In addition, The Small Business Liability Relief and Brownfields Revitalization Act, which became law on January 11, 2002, contains a federal enforcement bar which prohibits EPA from pursuing a brownfield participant enrolled in the state cleanup program. Parties interested in the VRP should contact their local DEQ Regional Office.

1. DEQ-EPA Memorandum of Agreement

DEQ and EPA entered into a Memorandum of Agreement ("MOA") on January 11, 2002 concerning Virginia's VRP. The MOA is designed to provide a high level of certainty that parties enrolled in the VRP will not be subjected to an EPA action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"). In the MOA, the agencies agreed to facilitate the productive reuse of industrial and commercial properties by preventing and eliminating unnecessary impediments to the remediation, financing, transfer and appropriate use of these properties. Subject to some limitations, when a site has been investigated or remediated according to VRP procedures, EPA does not plan or anticipate taking removal or remedial action under CERCLA at the site. Furthermore, if the site is in the CERCLIS database, the site will be archived upon cleanup and issuance of a VRP Certificate of Satisfactory Completion.

2. Limitations on EPA's Authority Under CERCLA

The Federal Brownfield Act provides certain limitations to an enforcement action by EPA under CERCLA at eligible response sites. Subject to some limitations, if a person is conducting or has completed a response action in compliance with a State program, EPA may not take an administrative or judicial enforcement action under CERCLA to require a cleanup or recover response costs. See the Federal Brownfield Act located in Appendix B.

3. Eligibility Determination and Certificates of Completion

One of the first steps in the VRP process is the eligibility determination made by DEQ after it receives a VRP application. Under Virginia law, a site is eligible for the VRP where remediation has not clearly been mandated by EPA, DEQ or a court. The process for making eligibility determinations is set forth in DEQ guidance entitled Guidance for Determining Eligibility of Site for the Voluntary Remediation Program)VRP 99-01). Sites disclosed to DEQ in this manner may also qualify for penalty immunity (see below). After DEQ reviews the VRP application and its records, DEQ advises the applicant if the site is eligible for the VRP. Through this process a site owner will receive an agency determination that remediation has not clearly been mandated. This determination provides comfort to applicants that, whether or not they complete the program, DEQ does not believe remediation is mandated under law.

Upon completing the VRP program, DEQ issues a Certification of Satisfactory Completion of Remediation to the applicant. Under Code § 10.1-1232(C), the Certification constitutes immunity to an enforcement action under Virginia's environmental laws and is transferable to future owners of the site. The VRP regulations at 9 Virginia Administrative Code (VAC) 20-160-110 contains the criteria for issuing such Certification.

4. Additional Information and Regulations

Additional information, including the VRP guidance, is available on DEQ's website at www.deq.state.va.us/vrp. A copy of the MOA is on DEQ's Brownfield/Land Renewal website at www.deq.state.va.us/brownfieldweb. The VRP regulations are found at 9 VAC 20-160-10 *et seq.*

B. LIMITED LIABILITY FOR CERTAIN PERSONS

Section 10.1-1234 of the Virginia Brownfield Act provides for limiting the liability of certain persons and entities who might otherwise be liable as owners of contaminated facilities. Sections 10.1-1234(B), (C), and (D) address specific parties and provide criteria that persons or entities may rely upon to determine their eligibility for statutory limited liability. Subsection B addresses bona fide prospective purchaser, subsection C addresses innocent landowners, and subsection D concerns contiguous property owners. Entities that meet the criteria in these subsections are shielded from liability by statute. Consequently, no action by DEQ is necessary to provide liability relief or comfort to parties meeting the statutory criteria. DEQ does not plan to review private party real estate transactions to determine whether these statutory provisions apply. DEQ does issue Comfort Letters, if necessary, to address routine situations at brownfield sites. See Section G below.

Subsections B and C of the statute does not apply, however, to sites subject to the Resource Conservation and Recovery Act (RCRA). Consequently, these subsections provide no protection to hazardous waste sites, sanitary landfills, open dumps, and underground storage tanks regulated under RCRA or corresponding Virginia statutes and regulations. However, other provisions described in this document may be applicable at such sites.
These statutory provisions are discussed below.

1. Bona Fide Prospective Purchasers

A "bona fide prospective purchaser" is "a person who acquires ownership, or proposes to acquire ownership of, real property, subsequent to July 1, 2002, and after the release of hazardous substances occurred" Code § 10.1-1230. Section 10.1-1234(B) protects "bona fide prospective purchaser" from having to conduct containment or cleanup under Virginia's air, water and waste laws at a brownfield site if they meet the definition of a "bona fide prospective purchaser" and the additional requirements in the statute. As noted above, this protection does not apply to sites subject to RCRA.

The additional requirements for limiting liability under § 10.1-1234(B) are:

- The person did not cause, contribute, or consent to the release or threatened release;

- The person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable (i.e., caused the contamination);

- The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release; to prevent any threatened future release; and to prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances; and,

- The person does not impede the performance of any response action.

This provision closely parallels the prospective purchaser protections provided under the federal brownfield act. Parties may refer to the federal brownfield act for possible clarification should they have questions.

2. Innocent Landowners

An "innocent landowner" is "a person who holds any title, security interest or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred." Code § 10.1-1230. Section 10.1-1234(C) protects "innocent landowners" from having to conduct containment or cleanup under Virginia's air, water and waste laws at a brownfield site if they meet the definition of an "innocent landowner" and the additional requirements in the statute. As noted above, this protection does not apply to sites subject to RCRA. Those requirements are:

- The person did not cause, contribute, or consent to the release or threatened release;

- The person is not liable or potentially liable through any direct or indirect familial relationship; or any contractual, corporate, or financial relationship; or is not the result of a reorganization of a business entity that was potentially liable;

- The person made all appropriate inquiries into the previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law;

- The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances;

- The person does not impede the performance of any response action; and

- If either (a) at the time the person acquired the interest, he did not know and had no reason to know that any hazardous substances had been or were likely to have been disposed of on, in, or at the site; or (b) the person is a government entity that acquired the site by escheat or through other involuntary transfer or acquisition.

This provision closely parallels the innocent landowner protection provided under the federal brownfield act. Parties may refer to the federal brownfield act for possible clarification should they have questions.

Innocent landowners may also be exempt from liability under Code §§ 10.1406(A)(3) and (4) regarding a "contractual arrangement," as defined in 42 U.S.C. § 9601(35). Code § 10.1402(19) imposes liability for the cost recovery and cleanup of a site where hazardous or solid wastes have been improperly managed. Code §§ 1406(A)(3) and (4) may exempt an innocent landowner from liability if, at the time they entered into a contractual arrangement for acquiring the property, they did not know and had no reason to know that any hazardous substance was previously disposed of on the property.

(These exemptions can be used as a defense by a party against whom DEQ seeks to impose liability for cost recovery and cleanup at a site.

3. Involuntary Acquisitions by Governmental Entities

Two provisions of Virginia law provide liability protections as an "innocent landowner" to government entities that "involuntarily" acquire property. Code of Virginia Section 10.1-1234(C)(v)(b) provides that a government entity that acquired a site by escheat or through other involuntary transfer or acquisition may qualify for protection as an innocent landowner. See discussion above regarding "innocent landowners." Parties may refer to the following documents for possible clarification should they have questions:

- Fact Sheet: The Effect of Superfund on Involuntary Acquisition of Contaminated Property by Government Entities (12/95)

- Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisition by Government Entities (06/30/97)

- Municipal Immunity from CERCLA Liability for Property Acquired through Involuntary State Action (10/20/95)

Copies of these policies may be found on EPA's website at www.epa.gov/oeca.osre.

Government entities may also be exempt from liability under Code §§ 1406(A)(3) and (4) regarding a "contractual arrangement," as defined in 42 U.S.C. § 9601*(35).* Code of Virginia § 10.1-1402(19) imposes liability for the cost recovery and cleanup of a site where hazardous or solid wastes have been improperly managed. Code §§ 1406(A)(3) and (4) may exempt a governmental entity that acquires property by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation after the disposal of waste. The exemption would apply if, at the time they acquired the property, they did not know and had no reason to know that any hazardous substance was previously disposed of on the property.

The exemption in Code §§ 1406(A)(3) and (4) can be used as a defense by a party against whom DEQ seeks to impose liability for cost recovery and cleanup at a site.

4. Property Acquired through Inheritance or Bequest

Persons who acquire property through inheritance or bequest may be exempt from liability under Code § 1406(A)(3) and (4) regarding a "contractual relationship," as defined in 42 U.S.C. § 9601(35). Code of Virginia § 10.1-1402(19) imposes liability for the cost recovery and cleanup of a site where hazardous or solid wastes have been improperly managed. Code § 1406(A)(3) and (4) may exempt persons who inherit property if, at the time they acquired the property, they did not know and had no reason to know that any hazardous substance was previously disposed of on the property.

This exemption can be used as a defense by a party against whom DEQ seeks to impose liability for cost recovery and cleanup at a site.

5. Contiguous Properties

Code of Virginia Section 10.1-1234(D) provides liability protection to certain landowners of sites contiguous to or similarly situated to property contaminated with hazardous waste, including groundwater contaminated solely by subsurface migration in an aquifer from someone else's property. Subsection D protects such owners from having to conduct containment or cleanup under Virginia's air, water and waste laws on their property if their property has been or is threatened to be contaminated by the neighboring property. For protection, such owner must meet the following requirements:

- The person did not cause, contribute, or consent to the release or threatened release;
- The person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable; and,
- The person provides full cooperation, assistance and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

Parties may refer to the following documents for possible clarification should they have questions:

- The Federal Brownfield Act located in Appendix B; and,
- EPA's Policy Toward Owners of Property Containing Contaminated Aquifers (05/24/95).

C. DIRECTOR DETERMINATION OF LIMITED LIABILITY

Code of Virginia Section 10.1-1234(A) of the Virginia Brownfield Act authorizes the DEQ Director to make determinations limiting the liability of certain persons and entities who might otherwise be liable as owners of contaminated sites. Specifically, the statute lists the following parties as eligible for a director determination: lenders, innocent purchasers or landowner, de minimis contributor or others who have grounds to claim limited responsibility for containment or cleanup.

In granting limited liability under § 10.1-1234(A) for innocent purchasers and landowners, the Director or his designee considers the criteria in §§ 10.1-1234(B) and (C), as discussed above. Issuance of such a determination is a case decision.

In granting limited liability to lenders, the Director or his designee considers, among other things, the following:

- Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisition by Government Entities (06/30/97);
- Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996; and,
- Underground Storage Tanks — Lender Liability Rule

Regarding de minimis contributor or others who have grounds to claim limited responsibility for containment or clean-up, the Director or his designee would consider factors similar to that found in § 10.1-1234 (A-C). For de minimis contributor, the Director or his designee would consider whether they qualified as a de minimis contributor to the contamination. Copies of these documents may be found on EPA's website at www.epa.gov/oeca/osre.

Parties interested in a Director's determination of limited liability should contact Chris Evans in DEQ's Central Office at (804) 698-4336. In lieu of a Director determination, parties are encouraged to pursue a Comfort Letter from DEQ, which is a more timely process for securing comfort about a brownfield site. .

D. BROWNFIELD AMNESTY PROGRAM

Pursuant to Code of Virginia § 10.1-1233, DEQ established the Brownfield Amnesty Program. which provides immunity from administrative and civil penalties under Virginia's air, water and waste laws for "voluntary disclosure" of brownfield sites and potential or known contamination at those sites. A disclosure is voluntary if it meets the following statutory criteria:

- The disclosure is not required by law, regulation, permit, or order;
- The person making the disclosure adopts a plan to market the site for redevelopment or ensures the timely remediation of the site by exercising appropriate care; and,
- The person making the disclosure conducts a Phase I or similar study to help prospective purchasers understand the existing environmental conditions at the site.

No immunity is available if the person has acted in bad faith.

Parties interested in the Brownfield Amnesty Program should contact Chris Evans in DEQ's Central Office at (804) 698-4336 and provide sufficient information to show that they meet these requirements, including a plan to market and remediate the site.

E. CIVIL CHARGE MITIGATION FOR SELF-DISCLOSED VIOLATIONS

Modeled after EPA policy, procedures in DEQ's Enforcement Manual provide for mitigating civil charges for self-disclosed violations. Civil charge mitigation means that DEQ will eliminate or substantially reduce a civil charge that could be imposed for a violation. Parties are eligible for mitigation of any potential civil charges if they promptly disclose the violations to DEQ or EPA, cooperate with the agency, and make good faith efforts to correct the violations. These procedures can be found in Chapter *5* of DEQ's Enforcement Manual, which can be found on DEQ website at http://www.deq.state.va.us/enforcement/manual.html. Parties seeking more information concerning EPA's policy should consult EPA's website at http://es.epa.gov/oeca/main/strategy/crossp.html.

Parties interested in civil charge mitigation should contact their local DEQ Regional Office.

III. CONCLUSION

For additional information, interested persons should contact their DEQ Regional Office, call the Brownfield/Land Renewal staff in DEQ's Central Office, or visit the DEQ's brownfield/land renewal website at www.deq.state.va.us/brownfieldweb.

SECTION 2

BROWNFIELD GUIDANCE DEFINITIONS

BROWNFIELD GUIDANCE DEFINITIONS

1. **Brownfield**: Real property; the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Additionally, The Small Business Liability Relief and Brownfields Revitalization Act (federal brownfield legislation signed January 2002) expanded the definition to include abandoned gas stations and mine scarred lands. And while environmental issues at brownfields are often times eligible for Virginia's Voluntary Remediation Program (VRP), sites subject to RCRA, solid waste regulations, and the LUST program are included as viable brownfield sites. DEQ recognizes that brownfields are real estate transactions with an environmental component. In accordance with Governor Warner's revitalization goals, DEQ is providing the necessary legal incentives and regulatory assistance to encourage the selling and buying of brownfield sites for the purpose of reuse and redevelopment.

2. **Plan to Market a Site**: This requirement of amnesty is fulfilled by submitting site data sufficient for inclusion into the Virginia Economic Development Partnership database of available brownfield properties. In addition, sites may be listed through typical means of selling property via real estate brokers, etc.

3. **Ensure Timely Remediation of the Site**: A requirement of amnesty, a written plan to remediate the site (if necessary), either as the seller or the entity to whom the property is conveyed. For sites where knowledge of the type and extent of contamination is known, either a corrective action plan or reasonable estimate of an appropriate remedy will suffice. For sites at which the type and extent to which contamination is not known, a best-estimate of possible environmental issues, if any, will be made available to the potential prospective purchaser along with information (website address, etc.) on DEQ's brownfield program.

4. **Bona Fide Prospective Purchaser**: a person who acquires ownership, or proposes to acquire ownership of, real property after the release of hazardous substances occurred. This liability protection applies only to properties transacted after July 1, 2002. Please refer to the Limitations on Liability for Bona Fide Prospective Purchasers Decision Matrix located in Section 4 of this manual.

5. **Innocent Landowner**: a person who holds any title, security interest or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred. Please refer to the Limitations on Liability for Innocent Landowners Decision Matrix located in Section 4 of this manual.

6. **Involuntary Acquisition by Governmental Entities**: Section 10.1-1234(C)(v)(b) provides that a government entity that acquired a site by escheat (property that has reverted to the state when no legal heirs or claimants exist) or through other involuntary transfer or acquisition may qualify for protection as an innocent landowner. See discussion above regarding innocent landowners. Please refer to the Limitations on Liability for Involuntary Acquisition by Governmental Entities Decision Matrix located in Section 4 of this manual.

7. **Contiguous Properties**: Adjacent to or similarly situated to property contaminated with hazardous waste, including groundwater contaminated solely by subsurface migration in an aquifer from someone else's property. Please refer to the Limitations on Liability for Contiguous Property Owners Decision Matrix located in Section 4 of this manual.

8. **Abandoned gas station:** sites that exhibit, or may exhibit, petroleum related releases for which no responsible party can be determined. The sites may include gasoline stations, fuel depots, or other fuel/petroleum related sites.

SECTION 3

FREQUENTLY ASKED QUESTIONS

BROWNFIELD FREQUENTLY ASKED QUESTIONS (FAQ)

1. What is a brownfield? Real property; the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Additionally, The Small Business Liability Relief and Brownfields Revitalization Act (federal brownfield legislation signed January 2002) expanded the definition to include abandoned gas stations and mine scarred lands. And while environmental issues at brownfields are often times eligible for Virginia's Voluntary Remediation Program (VRP), sites subject to RCRA, solid waste regulations, and the Leaking Underground Storage Tank program are included as viable browfield sites. In general, DEQ considers brownfield applicability based on the above definition irrespective of its regulatory requirements, provided no exclusions apply (see #3 below). DEQ recognizes that brownfields are real estate transactions with an environmental component. In accordance with Governor Warner's revitalization goals, DEQ is providing the necessary legal incentives and regulatory assistance to encourage the selling and buying of brownfield sites for the purpose of reuse and redevelopment. DEQ sees brownfields as a win-win situation for all involved and is dedicated to help facilitate their success.

2. Is the intent of DEQ to be proactive and provide incentives to help facilitate reuse of brownfield sites? Yes. The goal is to provide comfort to both buyers and sellers of sites for the purpose of remediation, reuse and redevelopment of brownfield sites.

3. Are there any exclusions from the liability protections for sites considered to be brownfields? Yes. Brownfield exclusions are detailed in The Small Business Liability Relief and Brownfields Revitalization Act (federal brownfields act) as follows:

   - a facility that is the subject of a planned or ongoing removal action under CERCLA;
   - a facility that is listed on the National Priorities List or is proposed for listing;
   - a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under state or federal environmental law;
   - a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and,
   - for additional exclusions please see a copy of the federal brownfields bill located in Section 8 of this manual.

4. What assurances do I have that EPA will not require additional remediation or other work be performed? DEQ and EPA executed a Memorandum of Agreement (MOA) in January, 02. The MOA constitutes no federal interest in cleanups performed under DEQ's VRP. DEQ received the MOA for the purpose of eliminating fear that EPA would "overfile" DEQ and pursue a Virginia VRP participant. In addition, please also see #5 below regarding the federal enforcement bar.

5. How does the federal enforcement bar apply? The federal enforcement bar, a component of The Small Business Liability Relief and Brownfields Revitalization Act, essentially prohibits EPA from taking enforcement action against a property owner that is enrolled in the states cleanup program. There are exceptions which can be reviewed in the federal Act.

6. What liability protections are available? Liability protections are available for bona fide prospective purchasers, contiguous property owners, innocent land owners, and land acquisitions through inheritance or bequest. For more information on each of these please refer their respective flow charts located in Section 4 as well as the Brownfield Provision Application Chart located in Section 5 of this manual.

7. Does a site have to be contaminated to be considered a brownfield? No, the definition of a brownfield also includes sites that have the potential to be contaminated. Often times the environmental conditions at a site are unknown at the time of purchase. The definition was made purposely broad to capture sites with unknown environmental concerns.

8. Are VRP and brownfield sites synonymous? Not necessarily. Although the environmental issues at many brownfield sites are often times addressed through the VRP, however, it is not a requirement. For example. a closed solid waste landfill, which is regulated under solid waste regulations, could be a brownfield provided it has reuse potential.

9. Can RCRA, solid waste, and LUST sites be considered brownfields? Yes. DEQ considers a site to be a brownfield of it meets the definition. Brownfields that are subject to these regulations are required to meet the respective regulatory requirements and might not be afforded the liability protections available under the state brownfield s Act.

10. What provisions will DEQ make to provide comfort in the event that RCRA violations are discovered and/or environmental conditions at a site are subject to RCRA? Considering DEQ's intent to rehabilitate and reuse brownfield sites, the agency will be flexible and work cooperatively with site owners that make voluntary disclosure as well as prospective purchasers that may discover, after the fact, that RCRA issues exist at the site. RCRA requirements would still be in effect.

11. Do the limited liability provisions in the state brownfield legislation apply directly to RCRA sites? No. DEQ does not have the regulatory authority to extend liability provisions for sites subject to RCRA. The state act does, however, stipulate that for sites that don't qualify for liability protections in 10.1-1234(B,C,D) of the state Act the Director may, consistent with programs developed under the federal acts, make a determination to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act, the State Water Control Law, the State Air Pollution Control Law, or other applicable law. In general, DEQ will work cooperatively with parties interested in redeveloping RCRA brownfields.

12. Is there financial assistance available from Virginia to help pay for assessments and/or cleanups of brownfield sites? Virginia recently passed the Brownfield Restoration and Land Renewal Act which created the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund. To date that fund is yet to be appropriated. However, through a Cooperative Agreement with EPA, DEQ can provide site assessment services to public entities. Please contact Mr. Jerry Grimes at 804-698-4207 for more information or visit the DEQ website at www.deq.state.va.us/brownfieldweb/bfields.html. Additionally, the Virginia Resources Authority offers below market financing to public and private entities for infrastructure improvements and cleanup of brownfield sites. Please contact Mr. Howard Estes directly at 804-644-3103 or visit their website at www.virginiaresources.org.

13. Is there any direct grant funding available from EPA to help pay for assessments and/or cleanups of brownfield sites? EPA accepts applications annually, generally in the fall, for a variety of grants and loans. The grants for which application can be made include $200,000 Brownfield Assessment Grants and $200,000 cleanup grants (up to $1,000,000 in the aggregate per applicant). EPA also accepts applications for $1,000,000 revolving loan funds. Further information can be obtained at www.epa.gov.

14. What is amnesty from civil penalty and how does it work? Under The Brownfields Restoration and Land Renewal Act, any person making a voluntary disclosure as defined in the Act regarding real or potential contamination at a brownfield site shall not be assessed an administrative or civil penalty under state environmental laws. DEQ recognizes and understands the fear felt by public and private land owners that they may potentially be treated in a punitive manner should they notify DEQ that they have, or may have, environmental impacts at their site. Because DEQ's goal is the reuse of these sites, and not to be punitive, the amnesty provision was created to provide comfort for site owners to bring their properties forward via voluntary disclosure and make them available for reuse. Specifically, to the extent consistent with federal law, amnesty will be afforded to any person making a voluntary disclosure regarding real or potential contamination at a brownfield site shall not be assessed an administrative or civil penalty under the Virginia Waste Management Act, the State Water Control Law, the State Air Pollution Control Law, or any other applicable law. A disclosure is voluntary if it is not otherwise required by law, regulation, permit, or administrative order and the person making the disclosure adopts a plan to market for redevelopment or otherwise ensure the timely remediation of the site by exercising appropriate care, if necessary. Additionally, the disclosure should include a Phase I Environmental Assessment or similar documentation to help prospective purchasers understand the existing environmental conditions at the site. Amnesty shall not be accorded if it is found that a person making the voluntary disclosure has acted in bad faith. For amnesty eligibility criteria, please refer to the Amnesty From Civil Penalty For Voluntary Disclosure Decision flowchart located in Section 4 of this manual.

15. Is amnesty afforded me if I'm found to have environmental impacts on my property that should have been reported to DEQ? No. However, DEQ may consider each site on a case-by-case basis and work constructively to resolve environmental issues thereby helping facilitate reuse of the site.

16. Are the amnesty and liability provisions a trap? No. The amnesty and liability provisions are not tools to trap land owners or trick purchasers of contaminated properties into cleanups. These provisions are substantive and provide a cooperative, rather than an enforcement based, manner in which brownfields can be reused. They are intended to mitigate concerns over possible punitive responses by DEQ on the part of both sellers and buyers of brownfield sites.

17. Does the amnesty provision in the state brownfield legislation apply to RCRA sites? Yes, however, it is conditional and must be consistent with federal law. For example, if a site investigation is conducted during which hazardous wastes are discovered, and the site has not been a hazardous waste generator, voluntary disclosure of discovery is eligible for amnesty provided the criteria are met as presented on the Amnesty From Civil Penalty For Voluntary Disclosure Decision Matrix located in Section 4 of this manual. And while amnesty may be conditionally available under state law, there are no federal provisions for same nor is there amnesty from potential criminal or EPA action. Keep in mind, however, considering DEQ's intent to rehabilitate and reuse brownfield sites, the agency will be flexible and work cooperatively with site owners that make voluntary disclosure as well as prospective purchasers that may discover, after the fact, that RCRA issues exist at the site.

18. Once my site is discovered to be impacted by contamination am I obligated to clean it up? It depends on the nature of the site, the source of the contamination, when the contamination occurred, if the environmental impact is subject to a regulatory regime, and how DEQ learns about it. In order to qualify for the liability protections established in The Brownfield Restoration and Land Renewal Act you must exercise appropriate care. In some cases this means that remediation may be required. If the site was brought forward by voluntary disclosure, DEQ will work with you to ensure the appropriate cleanup process is followed. Specifics of contamination, on a site by site basis, will determine whether or not the site is subject to cleanup under a specific regulatory regime or eligible for the VRP. Should the site be impacted such that an imminent and substantial endangerment exists, DEQ's expectations are that it will be addressed expeditiously.

19. What does it mean to exercise appropriate care: This means taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances. If you perform all appropriate inquiry that will help shape what appropriate care may be taken to satisfy the risk-based approach of the VRP. Some examples of exercising appropriate care include entry and timely completion of a remedy in the Voluntary Remediation Program, stop a continuing release, preventing offsite migration, performing an environmental study such that a practical demonstration can be made to help protect the participant from tort claims for damages, or applying other remedies consistent with applicable regulatory requirements.

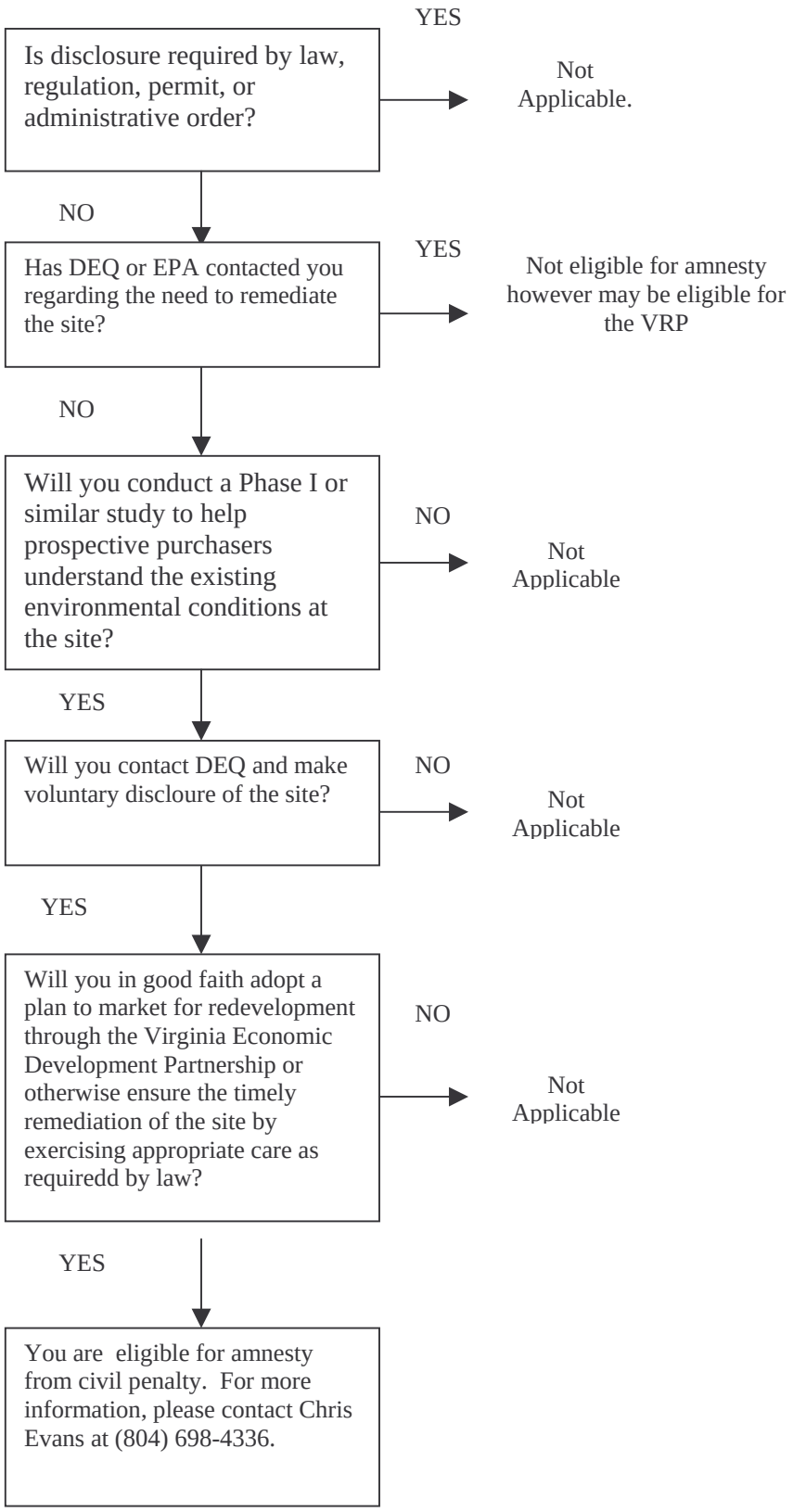
20. What does it mean to make all appropriate inquiries: This means investigation of previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law. EPA is in the process of preparing guidance regarding all appropriate inquiry and is expected to be available by December 2003.

21. What is the relationship between the federal and state brownfields Acts? The state Act mirrors the federal except for amnesty, which is not a provision of federal Act.

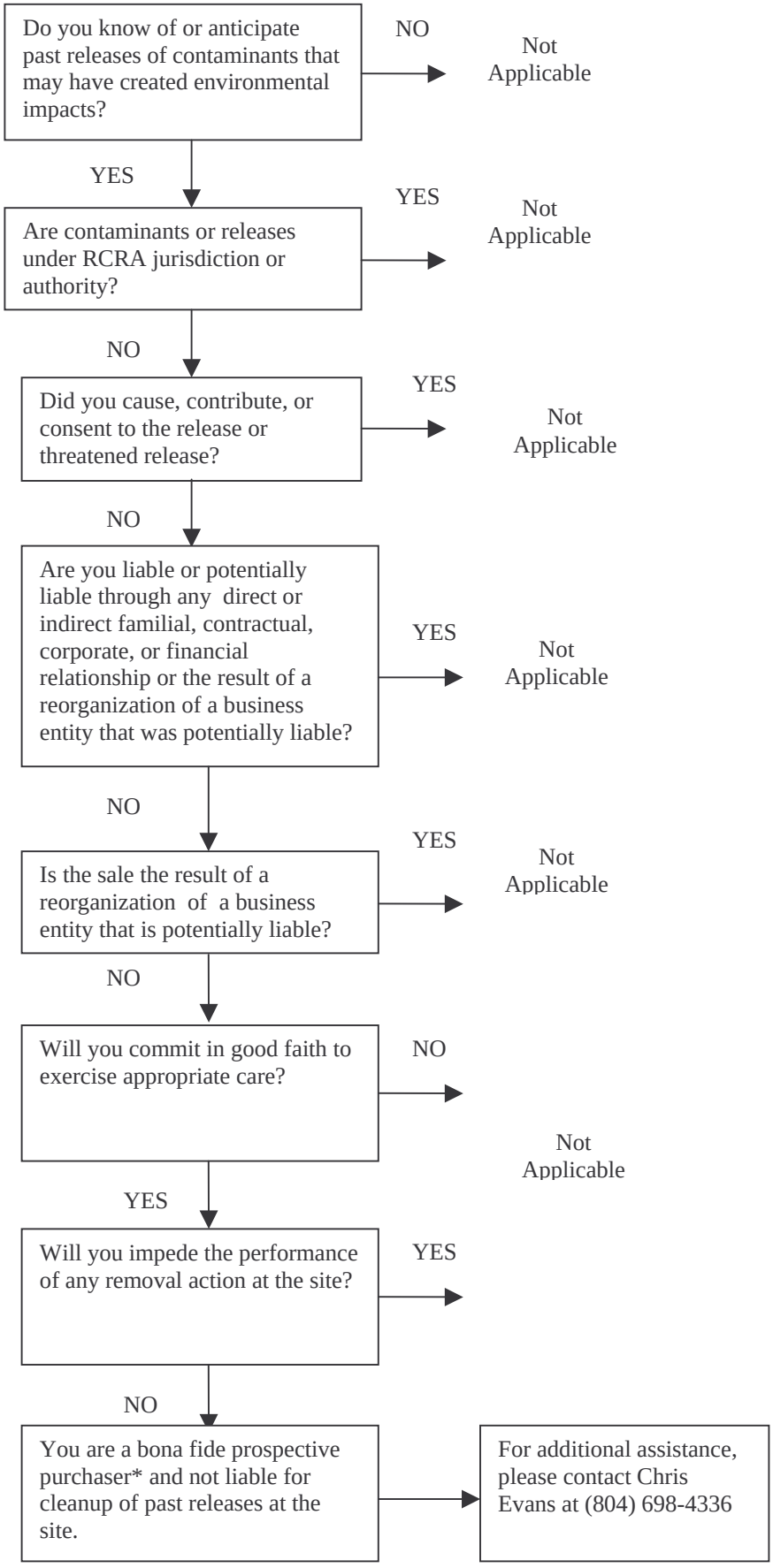
SECTION 4

AMNESTY AND LIMITED LIABILITY FLOWCHARTS

AMNESTY FROM CIVIL PENALTY FOR VOLUNTARY DISCLOSURE FLOWCHART

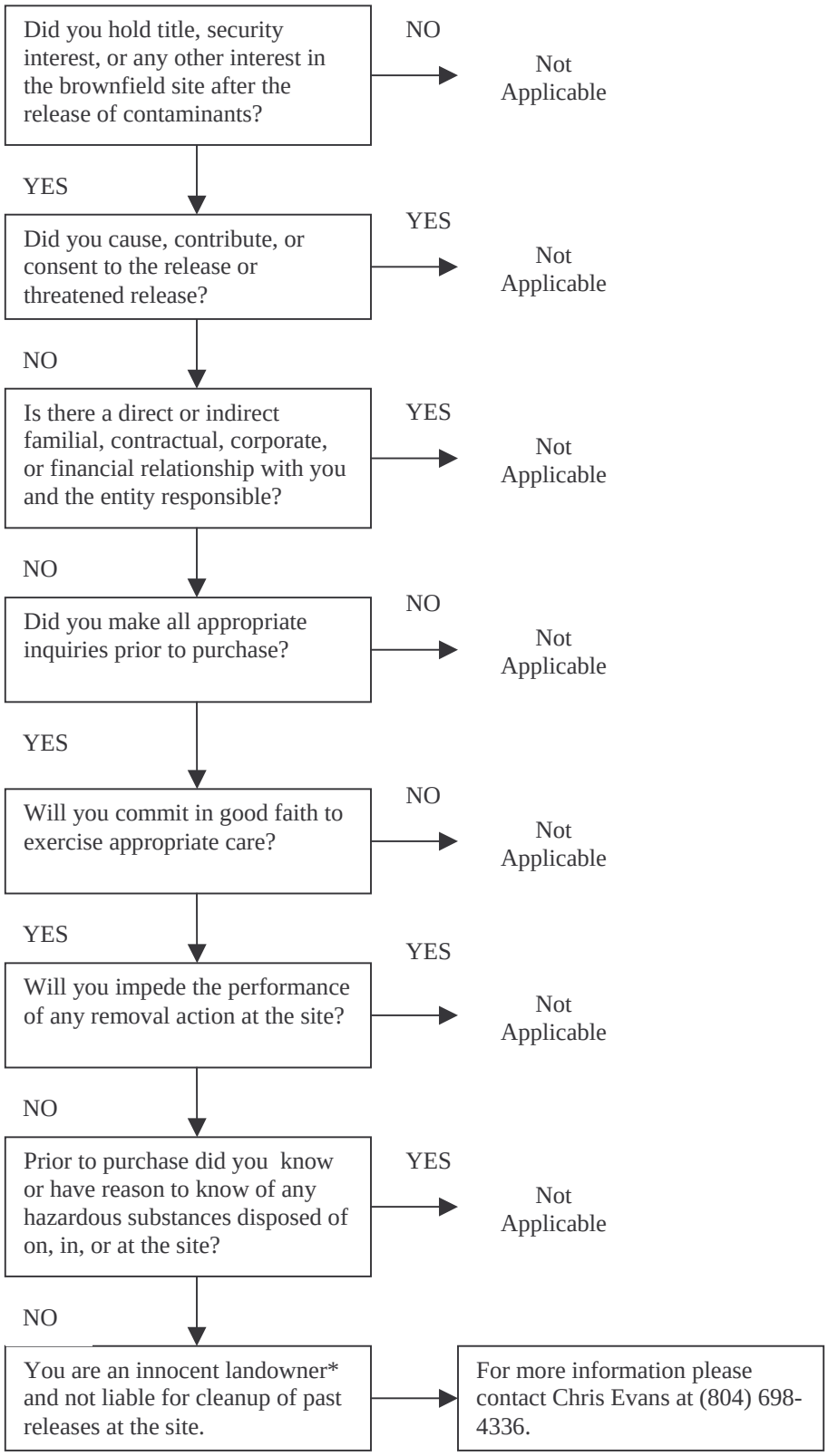


LIMITATIONS ON LIABILITY FOR BONA FIDE PROSPECTIVE PURCHASERS**
FLOWCHART



** for sites purchased after July 1, 2002.

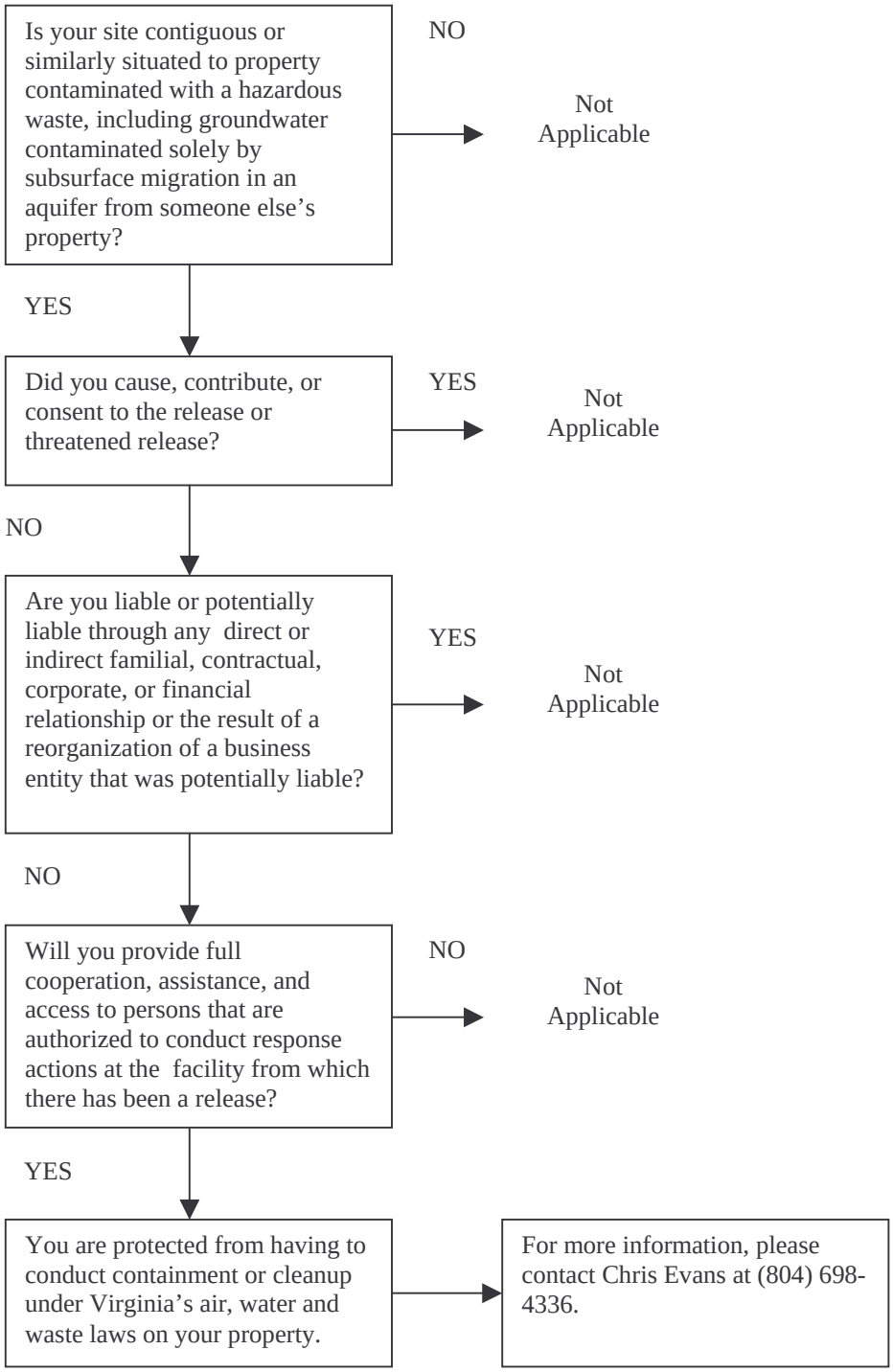
LIMITATIONS ON LIABILITY FOR INNOCENT LANDOWNERS
FLOWCHART



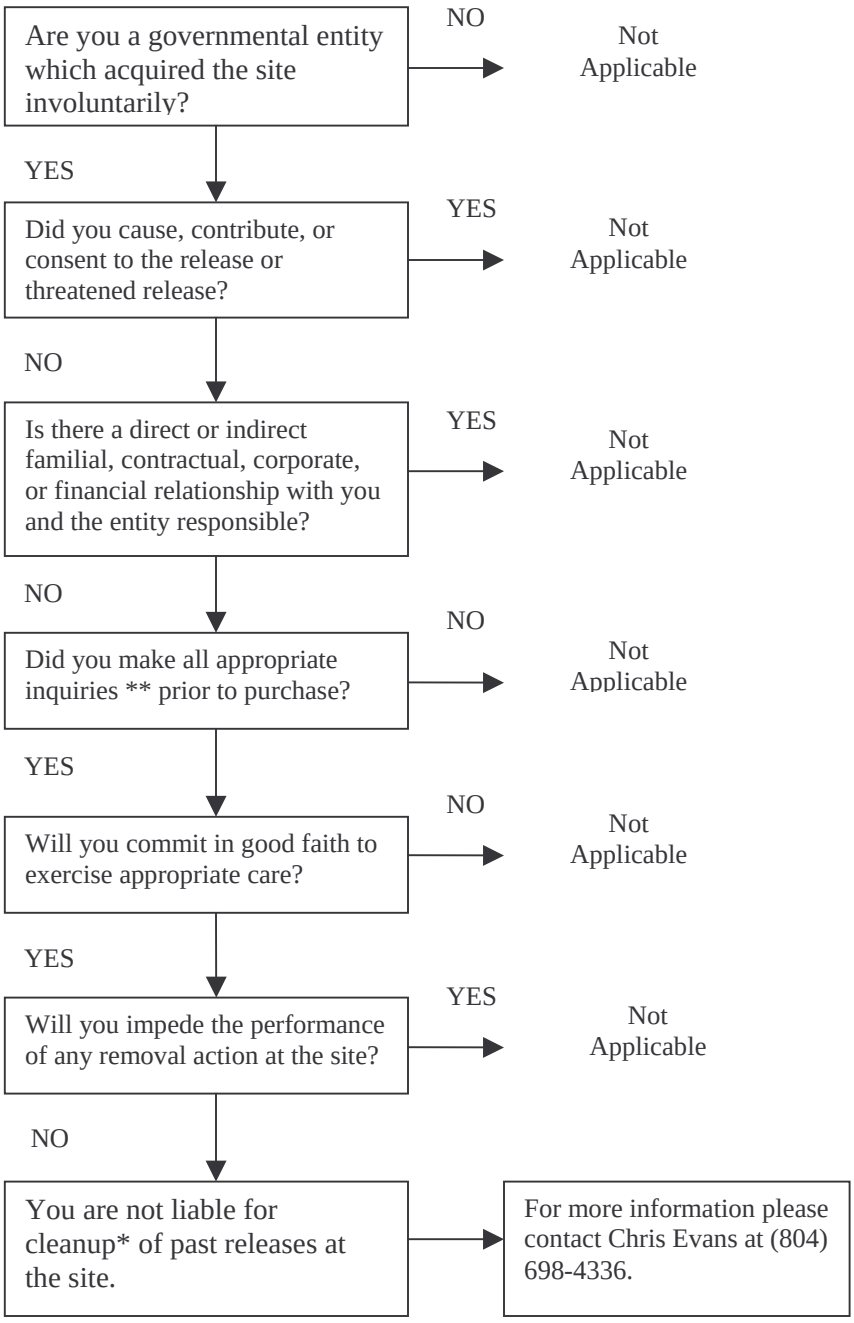
* must exercise appropriate care to maintain eligibility.

LIMITATIONS ON LIABILITY FOR CONTIGUOUS PROPERTY OWNERS FLOWCHART

I



LIMITATIONS ON LIABILITY FOR INVOLUNTARY ACQUISITIONS BY GOVERNMENTAL ENTITIES
FLOWCHART



** please contact DEQ for clarification

* must exercise appropriate care to maintain eligibility.

SECTION 5

BROWNFIELD PROVISION APPLICATION CHART

THIS PAGE LEFT TEMPORARILY BLANK

(based upon appropriate demonstration)

* Please refer to Frequently Asked Question #15

SECTION 6

EXAMPLE LETTERS

Mr./Ms.
Address
City, State zip

Dear XXXX:

We have reviewed your request for an evaluation of eligibility for amnesty from civil and administrative penalties pursuant to § 10.1-1233 of the Code of Virginia for the XXXXX property located in XXXX, Virginia. This provision states that any person making a voluntary disclosure regarding real or potential contamination at a brownfield site shall not be assessed an administrative or civil penalty under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law. A disclosure is considered voluntary if:

- it is not otherwise required by law, regulation, permit or administrative order;
- the person making the disclosure adopts a plan to market for redevelopment or otherwise ensure the timely remediation of the site;
- a Phase I environmental assessment, or similar, is performed to assist prospective purchasers in their understanding of existing site environmental conditions, and
- if necessary, appropriate care is exercised by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

Based on the information provided in your request for the aforementioned property, and assuming it was given in good faith, it appears that you qualify to assert the provision of amnesty under § 10.1-1233 of the Code of Virginia. However, eligibility for amnesty will not be maintained if it is determined that you have made this disclosure in bad faith.

Information for the above referenced site is to be submitted for inclusion into the Brownfield Database at the Virginia Economic Development Partnership. This will help satisfy the marketing requirement outlined above. In addition, participants are encouraged to market their properties via other traditional real estate sales methods (i.e. - brokers).

We believe that the Brownfields Restoration and Land Renewal Act was intended to encourage development of sites like this. We hope you are successful in returning this land to a useful purpose while ensuring that human health and the environment are adequately protected. Should you have any questions, please feel free to contact Chris Evans, Virginia DEQ Brownfields Coordinator, at (804) 698-4336.

Sincerely,

Robert Weld, Director
Office of Remediation programs

Date
Mr./Mrs.
Title
Company/Organization
Address
City, Virginia zip

Dear Mr./Mrs.,

You have requested status as a bona fide prospective purchaser for the sites identified as _____ located in _____, Virginia pursuant to § 10.1-1234(B) of the Code of Virginia. This provision states that a bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), if:

- you did not cause, contribute, or consent to the release or threatened release;
- you are not liable or potentially liable through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable;
- you exercise appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance, and
- you do not impede the performance of any response action.

The above conditions, as presented in § 10.1-1234(B) of the Code of Virginia, track federal law for bona fide prospective purchaser status under the Small Business Liability Relief and Brownfields Revitalization Act (federal brownfield legislation) and are not available to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.).

Based upon the information you provided in your letter/report/correspondence dated _____, it appears that you qualify to assert the liability protections afforded a bona fide prospective purchaser under § 10.1-1234(B) .". However, should it be determined that you have acted in bad faith and/or have not satisfactorily exercised appropriate care, liability protection under § 10.1-1234(A) of the Code of Virginia may no longer apply. We thank you for your participation in DEQ's Land Renewal/Brownfields Program and wish you luck. with your _____ project. Should you have any questions, please contact Chris Evans, Virginia DEQ Brownfields Coordinator, at (804) 698-4336.

Sincerely,

Robert Weld, Director
Office of Remediation Programs

Date
Mr./Mrs.
Title
Name of governmental entity
Street address
City, State zip

Dear Mr./Mrs.,

You have requested status as a governmental entity which has acquired property involuntarily for the site(s) located at _____, Virginia pursuant to § 10.1-1234(C)(v)(b) of the Code of Virginia. This provision states that a governmental entity which acquires a property involuntarily shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), if:

- you did not cause, contribute, or consent to the release or threatened release;
- you are not liable or potentially liable through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable;
- you made all appropriate inquiries into the previous use of the facility in accordance with generally accepted good commercial and customary standards and practices including those established by federal law;
- you exercise appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
- you do not impede the performance of any response action, and
- you are a governmental entity that acquired the site by escheat or through other involuntary transfer or acquisition.

This above provision is not available to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.).

Based upon the information you provided in your letter/report/correspondence dated _____, it appears that you qualify to assert the liability protections afforded as a governmental entity that acquired property involuntarily under § 10.1-1234(C)(v)(b). for protection . However, should it be determined that you have acted in bad faith and/or have not satisfactorily exercised appropriate care, liability protection under § 10.1-1234(C)(v)(b) of the Code of Virginia may no longer apply. We thank you for your participation in DEQ's Land Renewal/Brownfields Program and wish you luck. with the _____ project/site. Should you have any questions, please contact Chris Evans, Virginia DEQ Brownfields Coordinator, at (804) 698-4336.

Sincerely,

Robert Weld, Director
Office of Remediation Programs

Date
Mr./Mrs.
Title
Name of organization
Street address
City, State zip

Dear Mr./Mrs.,

You have requested status as an innocent landowner for the site(s) located at _____, Virginia pursuant to § 10.1-1234(C) of the Code of Virginia. This provision states that an innocent landowner who holds title, security interest or any other interest shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), if:

- you did not cause, contribute, or consent to the release or threatened release;
- you are not liable or potentially liable through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable;
- you made all appropriate inquiries into the previous use of the facility in accordance with generally accepted good commercial and customary standards and practices including those established by federal law;
- you exercise appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
- you do not impede the performance of any response action, and
- at the time you acquired the interest, you did not know and had no reason to know that any hazardous substances had been or were likely to have been disposed of on, in, or at the site.

The above conditions, as presented in § 10.1-1234(C) of the Code of Virginia, track federal law for Innocent Landowner status under the Small Business Liability Relief and Brownfields Revitalization Act (federal brownfield legislation) and are not available to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.).

Based upon the information you provided in your letter/report/correspondence dated _____, it appears that you qualify to assert the liability protections afforded an innocent landowner under § 10.1-1234(C). However, should it be determined that you have acted in bad faith and/or have not satisfactorily exercised appropriate care, liability protection under § 10.1-1234(C) of the Code of Virginia may no longer apply. We thank you for your participation in DEQ's Land Renewal/Brownfields Program and wish you luck. with the _____ project/site. Should you have any questions, please contact Chris Evans, Virginia DEQ Brownfields Coordinator, at (804) 698-4336.

Sincerely,

Robert Weld, Director
Office of Remediation Programs

Date
Mr./Mrs.
Title
Name of organization
Street address
City, State zip

Dear Mr./Mrs.,

You have requested status as a contiguous property owner for the site(s) located at _____, Virginia pursuant to § 10.1-1234(D) of the Code of Virginia. This provision states that a person who owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from real property that is not owned by that person shall not be considered liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), if:

- you did not cause, contribute, or consent to the release or threatened release;
- you are not liable or potentially liable through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable; and,
- you provide full cooperation, assistance and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

The above conditions, as presented in § 10.1-1234(D) of the Code of Virginia, track federal law for bona fide prospective purchaser status under the Small Business Liability Relief and Brownfields Revitalization Act (federal brownfield legislation) and are not available to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.).

Based upon the information you provided in your letter/report/correspondence dated _____, it appears that you qualify to assert the liability protections afforded a contiguous property owner under § 10.1-1234(D). However, should it be determined that you have acted in bad faith or not satisfied the aforementioned requirements, liability protection under § 10.1-1234(D) of the Code of Virginia may no longer apply. We thank you for your participation in DEQ's Land Renewal/Brownfields Program and wish you luck. with the _____ project/site. Should you have any questions, please contact Chris Evans, Virginia DEQ Brownfields Coordinator, at (804) 698-4336.

Sincerely,

Robert Weld, Director
Office of Remediation Programs

SECTION 7

STATE BROWNFIELD ACT

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 378

An Act to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 12.1, consisting of sections numbered 10.1-1230 through 10.1-1237, and to repeal Article 4.1 (§§ 10.1-1429.1, 10.1-1429.2 and 10.1-1429.3) of Chapter 14 of Title 10.1 of the Code of Virginia and to repeal Article 4.2 (§ 10.1-1429.4) of Chapter 14 of Title 10.1 of the Code of Virginia, relating to the Brownfield Restoration and Land Renewal Act.

[H 463**]**

Approved April 1, 2002

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 10.1 a chapter numbered 12.1, consisting of sections numbered 10.1-1230 through 10.1-1237, as follows:

CHAPTER 12.1.

BROWNFIELD RESTORATION AND LAND RENEWAL ACT.

§ 10.1-1230. Definitions.

"Authority" means the Virginia Resources Authority.

"Bona fide prospective purchaser" means a person who acquires ownership, or proposes to acquire ownership of, real property after the release of hazardous substances occurred.

"Brownfield" means real property; the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

"Cost" as applied to any project financed under the provisions of this chapter, means the reasonable and necessary costs incurred for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications; architectural, engineering, financial, legal or other special services; site assessments, remediation, containment, and demolition or removal of existing structures; the costs of acquisition of land and any buildings and improvements thereon, including the discharge of any obligation of the seller of such land, buildings or improvements; labor; materials, machinery and equipment; the funding of accounts and reserves that the Authority may require; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred prior to completion of the project, and the cost of other items that the Authority determines to be reasonable and necessary.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Fund" means the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund.

"Innocent land owner" means a person who holds any title, security interest or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision of the Commonwealth created by the General Assembly or otherwise created pursuant to the laws of the Commonwealth or any combination of the foregoing.

"Partnership" means the Virginia Economic Development Partnership.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, public service authority, or any other legal entity.

"Project" means all or any part of the following activities necessary or desirable for the restoration and redevelopment of a brownfield site: (i) environmental or cultural resource site assessments, (ii) monitoring, remediation, cleanup, or containment of property to remove hazardous substances, hazardous wastes, solid wastes or petroleum, (iii) the lawful and necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing

2

structures, or other site work necessary to make a site or certain real property usable for economic

development, and (v) development of a remediation and reuse plan.
§ 10.1-1231. Brownfield restoration and land renewal policy and programs.
It shall be the policy of the Commonwealth to encourage remediation and restoration of brownfields by removing barriers and providing incentives and assistance whenever possible. The Department of Environmental Quality and the Economic Development Partnership and other appropriate agencies shall establish policies and programs to implement these policies, including a Voluntary Remediation Program, the Brownfields Restoration and Redevelopment Fund, and other measures as may be appropriate.
§ 10.1-1232. Voluntary Remediation Program.
A. The Virginia Waste Management Board shall promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes, or petroleum. The regulations shall apply where remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The regulations shall provide for the following:
1. The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal standards for soil, groundwater and sediments, taking into consideration scientific information regarding the following: (i) protection of public health and the environment, (ii) the future industrial, commercial, residential, or other use of the property to be remediated and of surrounding properties, (iii) reasonably available and effective remediation technology and analytical quantitation technology, (iv) the availability of institutional or engineering controls that are protective of human health or the environment, and (v) natural background levels for hazardous constituents;
2. The establishment of procedures that minimize the delay and expense of the remediation, to be followed by a person volunteering to remediate a release and by the Department in processing submissions and overseeing remediation;
3. The issuance of certifications of satisfactory completion of remediation, based on then-present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the Department determines that no further action is required;
4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law; and
5. Registration fees to be collected from persons conducting voluntary remediation to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of $5,000 or one percent of the cost of the remediation.
B. Persons conducting voluntary remediations pursuant to an agreement with the Department entered into prior to the promulgation of those regulations may elect to complete the cleanup in accordance with such an agreement or the regulations.
C. Certification of satisfactory completion of remediation shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 13 (§ 10.1-1300 et seq.) of this title, or any other applicable law.
D. At the request of a person who owns, operates, holds a security interest in or contracts for the purchase of property from which the contamination to be voluntarily remediated originates, the Department is authorized to seek temporary access to private and public property not owned by such person conducting the voluntary remediation as may be reasonably necessary for such person to conduct the voluntary remediation. Such request shall include a demonstration that the person requesting access has used reasonable effort to obtain access by agreement with the property owner. Such access, if granted, shall be granted for only the minimum amount of time necessary to complete the remediation and shall be exercised in a manner that minimizes the disruption of ongoing activities
3
and compensates for actual damages. The person requesting access shall reimburse the Commonwealth for reasonable, actual and necessary expenses incurred in seeking or obtaining

access. Denial of access to the Department by a property owner creates a rebuttable presumption that such owner waives all rights, claims and causes of action against the person volunteering to perform remediation for costs, losses or damages related to the contamination as to claims for costs, losses or damages arising after the date of such denial of access to the Department. A property owner who has denied access to the Department may rebut the presumption by showing that he had good cause for the denial or that the person requesting that the Department obtain access acted in bad faith.

§ 10.1-1233. Amnesty for voluntary disclosure and restoration of brownfield sites.

The Director may, consistent with programs developed under the federal acts, provide incentives for the voluntary disclosure of brownfield sites and related information regarding potential or known contamination at that site. To the extent consistent with federal law, any person making a voluntary disclosure regarding real or potential contamination at a brownfield site shall not be assessed an administrative or civil penalty under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law. A disclosure is voluntary if it is not otherwise required by law, regulation, permit or administrative order and the person making the disclosure adopts a plan to market for redevelopment or otherwise ensure the timely remediation of the site. Immunity shall not be accorded if it is found that the person making the voluntary disclosure has acted in bad faith.

§ 10.1-1234. Limitations on liability.

A. The Director may, consistent with programs developed under the federal acts, make a determination to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law.

B. A bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (iv) the person does not impede the performance of any response action. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

C. An innocent land owner who holds title, security interest or any other interest in a brownfield site shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person made all appropriate inquiries into the previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law, (iv) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (v) the person does not impede the performance of any response action and if either (a) at the time the person acquired the interest, he did not know and had no reason to know that any hazardous substances had been or were likely to have been disposed of on, in, or at the site, or (b) the person is a government entity that acquired the

4

site by escheat or through other involuntary transfer or acquisition. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

D. A person that owns real property that is contiguous to or otherwise similarly situated with

respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from real property that is not owned by that person shall not be considered liable for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if the person did not cause, contribute, or consent to the release or threatened release, the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, and if such person provides full cooperation, assistance and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

E. The provisions of this section shall not otherwise limit the authority of the Department, the State Water Control Board, the Virginia Waste Management Board, or the State Air Pollution Control Board to require any person responsible for the contamination or pollution to contain or clean up sites where solid or hazardous waste or other substances have been improperly managed.

§ 10.1-1235. Limitation on liability at remediated properties under the jurisdiction of the Comprehensive Environmental Response, Compensation and Liability Act.

A. Any person not otherwise liable under state law or regulation, who acquires any title, security interest, or any other interest in property located in the Commonwealth listed on the National Priorities List under the jurisdiction of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. § 9601 et seq.), after the property has been remediated to the satisfaction of the Administrator of the United States Environmental Protection Agency, shall not be subject to civil enforcement or remediation action under this chapter, Chapter 13 (§ 10.1-1300 et seq.) of this title, the State Water Control Law (§ 62.1-44.2 et seq.), or any other applicable state law, or to private civil suit, related to contamination that was the subject of the satisfactory remediation, existing at or immediately contiguous to the property prior to the person acquiring title, security interest, or any other interest in such property.

B. Any person who acquires any title, security interest, or other interest in property from a person described in subsection A shall not be subject to enforcement or remediation actions or private civil suits to the same extent as the person provided in subsection A.

C. A person who holds title, a security interest, or any other interest in property prior to the property being acquired by a person described in subsection A shall not be relieved of any liability or responsibility by reacquiring title, a security interest, or any other interest in the property.

D. The provisions of this chapter shall not be construed to limit the statutory or regulatory authority of any state agency or to limit the liability or responsibility of any person when the activities of that person alter the remediation referred to in subsection A. The provisions of this section shall not modify the liability, if any, of a person who holds title, a security interest, or any other interest in property prior to satisfactory remediation or the liability of a person who acquires the property after satisfactory remediation for damage caused by contaminants not included in the remediation.

§ 10.1-1236. Access to abandoned brownfield sites.

A. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned brownfield site in order to investigate contamination, to abate any hazard caused by the improper management of substances within the jurisdiction of the Board, or to remediate the site. The petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner, operator or other responsible party and (ii) a plan approved by the Director and which is consistent with applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be considered a case decision as defined by § 2.2-4001.

B. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or state law or regulation who performs any investigative, abatement or remediation activities pursuant to this section shall not become subject to civil enforcement or remediation action under Chapter 14 (§ 10.1-1400 et seq.) of this title or other applicable state laws or to private civil suits

5

related to contamination not caused by its investigative, abatement or remediation activities.

C. This section shall not in any way limit the authority of the Virginia Waste Management Board, Director, or Department otherwise created by Chapter 14 (§ 10.1-1400 et seq.) of this title.

§ 10.1-1237. Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund

established; uses.

A. There is hereby created and set apart a special, permanent, perpetual and nonreverting fund to be known as the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund for the purposes of promoting the restoration and redevelopment of brownfield sites and to address environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The Fund shall consist of sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants, awards or other forms of financial assistance received by the Commonwealth.

B. The Authority shall administer and manage the Fund and establish the interest rates and repayment terms of such loans in accordance with a memorandum of agreement with the Partnership. The Partnership shall direct the distribution of loans or grants from the Fund to particular recipients based upon guidelines developed for this purpose. With approval from the Partnership, the Authority may disperse monies from the Fund for the payment of reasonable and necessary costs and expenses incurred in the administration and management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans for its management services.

C. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check and signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be made by the Authority upon written request signed by the Executive Director of the Virginia Economic Development Partnership.

D. The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

E. The Partnership may approve grants to local governments for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The grants may be used to pay the reasonable and necessary costs associated with the restoration and redevelopment of a brownfield site for (i) environmental and cultural resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan. The Partnership may establish such terms and conditions as it deems appropriate and shall evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority shall disburse grants from the Fund in accordance with a written request from the Partnership.

F. The Authority may make loans to local governments, public authorities, corporations and

6

partnerships to finance or refinance the cost of any brownfield restoration or remediation project for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to economic development prospects. The loans shall be used to pay the reasonable and necessary costs related to the restoration and redevelopment of a brownfield site for (i) environmental and cultural

resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan.

The Partnership shall designate in writing the recipient of each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

G. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant perform any of the following:

1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government, and (iii) any amounts necessary to create and maintain any required reserve.

2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government.

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

4. Create and maintain other special funds as required by the Authority.

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund;

b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, for the purpose of financing, and the pledging of the revenues from such combined projects and undertakings to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

d. The maintenance, replacement, renewal, and repair of the project; and

e. The procurement of casualty and liability insurance.

7

6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time during the term of the loan.

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default.

H. All local governments borrowing money from the Fund are authorized to perform any acts, take

any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

I. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

J. The Partnership, through its Director, shall have the authority to access and release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the balance of the Fund. If the Partnership, through its Director, requests a disbursement in an amount exceeding the current Fund balance, the disbursement shall require the written approval of the Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including, but not limited to, personnel, administrative and equipment costs and expenses directly incurred by the Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the Partnership.

The Authority is empowered at any time and from time to time to pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

K. The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

L. The Authority may, with the approval of the Partnership, pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall

8

remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

M. The Partnership, in consultation with the Department of Environmental Quality, shall develop guidance governing the use of the Fund and including criteria for project eligibility that considers the extent to which a grant or loan will facilitate the use or reuse of existing infrastructure, the extent to which a grant or loan will meet the needs of a community that has limited ability to draw on other

funding sources because of the small size or low income of the community, the potential for redevelopment of the site, the economic and environmental benefits to the surrounding community, and the extent of the perceived or real environmental contamination at the site. The guidelines shall include a requirement for a one-to-one match by the recipient of any grant made by or from the Fund.

2. That Article 4.1 (§§ 10.1-1429.1, 10.1-1429.2 and 10.1-1429.3) of Chapter 14 of Title 10.1 of the Code of Virginia is repealed and that Article 4.2 (§ 10.1-1429.4) of Chapter 14 of Title 10.1 of the Code of Virginia is repealed.

3. That regulations promulgated by the Virginia Waste Management Board pursuant to § 10.1-1429.1 shall remain in effect until amended or repealed.

4. That any certificates of satisfactory completion issued by the Virginia Waste Management Board pursuant to § 10.1-1429.1 shall remain in effect unless rescinded by the Board.

5. That the Department of Environmental Quality shall evaluate options for providing low-cost insurance against third-party claims arising out of environmental contamination from brownfield sites. This report shall be submitted to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources no later than November 1, 2002.

SECTION 8

FEDERAL BROWNFIELD ACT

H. R. 2869

One Hundred Seventh Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday, the third day of January, two thousand and one

An Act

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Liability Relief and Brownfields Revitalization Act''.

TITLE I—SMALL BUSINESS LIABILITY PROTECTION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Small Business Liability Protection Act''.

SEC. 102. SMALL BUSINESS LIABILITY RELIEF.

(a) EXEMPTIONS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following new subsections:

''(o) DE MICROMIS EXEMPTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this Act if liability is based solely on paragraph (3) or (4) of subsection (a), and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

''(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

''(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply in a case in which—

''(A) the President determines that—

''(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response

action or natural resource restoration with respect to the facility; or

''(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

''(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

''(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

''(4) NONGOVERNMENTAL THIRD-PARTY CONTRIBUTION ACTIONS.—In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this Act, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

''(p) MUNICIPAL SOLID WASTE EXEMPTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

''(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

''(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

''(C) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal

solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term 'affiliate' has the meaning of that term provided in the definition of 'small business concern' in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

''(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that—

''(A) the municipal solid waste referred to in paragraph

(1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;
''(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act; or
''(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.
''(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2) shall not be subject to judicial review.
''(4) DEFINITION OF MUNICIPAL SOLID WASTE.—
''(A) IN GENERAL.—For purposes of this subsection, the term 'municipal solid waste' means waste material—
''(i) generated by a household (including a single or multifamily residence); and
''(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—
''(I) is essentially the same as waste normally generated by a household;
''(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and
''(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.
''(B) EXAMPLES.—Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.
''(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—
''(i) combustion ash generated by resource recovery facilities or municipal incinerators; or
''(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.
''(5) BURDEN OF PROOF.—In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under section 107 or 113 by—
H. R. 2869—4
''(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or
''(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.
''(6) CERTAIN ACTIONS NOT PERMITTED.—No contribution action may be brought by a party, other than a Federal, State, or local government, under this Act with respect to circumstances described in paragraph (1)(A).
''(7) COSTS AND FEES.—A nongovernmental entity that commences,

after the date of the enactment of this subsection, a contribution action under this Act shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o).''.

(b) EXPEDITED SETTLEMENT.—Section 122(g) of such Act (42 U.S.C. 9622(g)) is amended by adding at the end the following new paragraphs:

''(7) REDUCTION IN SETTLEMENT AMOUNT BASED ON LIMITED ABILITY TO PAY.—

''(A) IN GENERAL.—The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

''(B) CONSIDERATIONS.—In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

''(C) INFORMATION.—A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

''(D) ALTERNATIVE PAYMENT METHODS.—If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

''(8) ADDITIONAL CONDITIONS FOR EXPEDITED SETTLEMENTS.—

''(A) WAIVER OF CLAIMS.—The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this Act) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

''(B) FAILURE TO COMPLY.—The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

''(C) RESPONSIBILITY TO PROVIDE INFORMATION AND ACCESS.—A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 104(e).

''(9) BASIS OF DETERMINATION.—If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible

party that requested a settlement under this subsection.
''(10) NOTIFICATION.—As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.
''(11) NO JUDICIAL REVIEW.—A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.
''(12) NOTICE OF SETTLEMENT.—After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.''.

SEC. 103. EFFECT ON CONCLUDED ACTIONS.

The amendments made by this title shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act.

TITLE II—BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Brownfields Revitalization and Environmental Restoration Act of 2001''.

Subtitle A—Brownfields Revitalization Funding

SEC. 211. BROWNFIELDS REVITALIZATION FUNDING.

(a) DEFINITION OF BROWNFIELD SITE.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability
H. R. 2869—6
Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:
''(39) BROWNFIELD SITE.—
''(A) IN GENERAL.—The term 'brownfield site' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.
''(B) EXCLUSIONS.—The term 'brownfield site' does not include—
''(i) a facility that is the subject of a planned or ongoing removal action under this title;
''(ii) a facility that is listed on the National Priorities List or is proposed for listing;
''(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this Act;
''(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
''(v) a facility that—

‘‘(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and
‘‘(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
‘‘(vi) a land disposal unit with respect to which—
‘‘(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and
‘‘(II) closure requirements have been specified in a closure plan or permit;
‘‘(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;
‘‘(viii) a portion of a facility—
‘‘(I) at which there has been a release of polychlorinated biphenyls; and
‘‘(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or
‘‘(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage
H. R. 2869—7
Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.
‘‘(C) SITE-BY-SITE DETERMINATIONS.—Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.
‘‘(D) ADDITIONAL AREAS.—For the purposes of section 104(k), the term ‘brownfield site’ includes a site that—
‘‘(i) meets the definition of ‘brownfield site’ under subparagraphs (A) through (C); and
‘‘(ii)(I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
‘‘(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’ under section 101; and
‘‘(bb) is a site determined by the Administrator or the State, as appropriate, to be—
‘‘(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and
‘‘(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and
‘‘(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

''(III) is mine-scarred land.''.
(b) BROWNFIELDS REVITALIZATION FUNDING.—Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) is amended by adding at the end the following:
''(k) BROWNFIELDS REVITALIZATION FUNDING.—
''(1) DEFINITION OF ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means—
''(A) a general purpose unit of local government;
''(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;
''(C) a government entity created by a State legislature;
''(D) a regional council or group of general purpose units of local government;
''(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;
''(F) a State;
''(G) an Indian Tribe other than in Alaska; or
''(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43
H. R. 2869—8
U.S.C. 1601 and following) and the Metlakatla Indian community.
''(2) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT GRANT PROGRAM.—
''(A) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to—
''(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and
''(ii) perform targeted site assessments at brownfield sites.
''(B) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—
''(i) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.
''(ii) SITE CHARACTERIZATION AND ASSESSMENT.—
A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 101(35)(B).
''(3) GRANTS AND LOANS FOR BROWNFIELD REMEDIATION.—
''(A) GRANTS PROVIDED BY THE PRESIDENT.—Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to—
''(i) eligible entities, to be used for capitalization of revolving loan funds; and
''(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed $200,000 for each site to be remediated.
''(B) LOANS AND GRANTS PROVIDED BY ELIGIBLE ENTITIES.
—An eligible entity that receives a grant under

subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—
''(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or
''(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.
''(C) CONSIDERATIONS.—In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—
''(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
H. R. 2869—9
''(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
''(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;
''(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and
''(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.
''(D) TRANSITION.—Revolving loan funds that have been established before the date of the enactment of this subsection may be used in accordance with this paragraph.
''(4) GENERAL PROVISIONS.—
''(A) MAXIMUM GRANT AMOUNT.—
''(i) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT.—
''(I) IN GENERAL.—A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, $200,000.
''(II) WAIVER.—The Administrator may waive the $200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed $350,000, based on the anticipated level of contamination, size, or status of ownership of the site.
''(ii) BROWNFIELD REMEDIATION.—A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed $1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—
''(I) the number of sites and number of communities

that are addressed by the revolving loan fund;
''(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;
''(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and
''(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.
''(B) PROHIBITION.—
''(i) IN GENERAL.—No part of a grant or loan under this subsection may be used for the payment of—
''(I) a penalty or fine;
H. R. 2869—10
''(II) a Federal cost-share requirement;
''(III) an administrative cost;
''(IV) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 107; or
''(V) a cost of compliance with any Federal law (including a Federal law specified in section 101(39)(B)), excluding the cost of compliance with laws applicable to the cleanup.
''(ii) EXCLUSIONS.—For the purposes of clause (i)(III), the term 'administrative cost' does not include the cost of—
''(I) investigation and identification of the extent of contamination;
''(II) design and performance of a response action; or
''(III) monitoring of a natural resource.
''(C) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS.—A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—
''(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and
''(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.
''(D) INSURANCE.—A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.
''(5) GRANT APPLICATIONS.—
''(A) SUBMISSION.—
''(i) IN GENERAL.—
''(I) APPLICATION.—An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator

to rank applications under subparagraph (C), to the extent that the information is available).

''(II) NCP REQUIREMENTS.—The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

''(ii) COORDINATION.—The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

H. R. 2869—11

''(iii) GUIDANCE.—The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

''(B) APPROVAL.—The Administrator shall—

''(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

''(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under the ranking criteria established under subparagraph (C).

''(C) RANKING CRITERIA.—The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

''(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

''(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

''(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-thannormal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

''(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

''(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

''(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

''(vii) The extent to which the applicant is eligible for funding from other sources.

''(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

''(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.
''(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.
H. R. 2869—12
''(6) IMPLEMENTATION OF BROWNFIELDS PROGRAMS.—
''(A) ESTABLISHMENT OF PROGRAM.—The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.
''(B) FUNDING RESTRICTIONS.—The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.
''(7) AUDITS.—
''(A) IN GENERAL.—The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.
''(B) PROCEDURE.—An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.
''(C) VIOLATIONS.—If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—
''(i) terminate the grant or loan;
''(ii) require the person to repay any funds received; and
''(iii) seek any other legal remedies available to the Administrator.
''(D) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of this subsection, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).
''(8) LEVERAGING.—An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).
''(9) AGREEMENTS.—Each grant or loan made under this subsection shall—
''(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and
''(B) be subject to an agreement that—
''(i) requires the recipient to—

''(I) comply with all applicable Federal and State laws; and
''(II) ensure that the cleanup protects human health and the environment;
H. R. 2869—13
''(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;
''(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and
''(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.
''(10) FACILITY OTHER THAN BROWNFIELD SITE.—The fact that a facility may not be a brownfield site within the meaning of section 101(39)(A) has no effect on the eligibility of the facility for assistance under any other provision of Federal law.
''(11) EFFECT ON FEDERAL LAWS.—Nothing in this subsection affects any liability or response authority under any Federal law, including—
''(A) this Act (including the last sentence of section 101(14));
''(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
''(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
''(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
''(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).
''(12) FUNDING.—
''(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $200,000,000 for each of fiscal years 2002 through 2006.
''(B) USE OF CERTAIN FUNDS.—Of the amount made available under subparagraph (A), $50,000,000, or, if the amount made available is less than $200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 101(39)(D)(ii)(II).''.

Subtitle B—Brownfields Liability Clarifications

SEC. 221. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:
''(q) CONTIGUOUS PROPERTIES.—
''(1) NOT CONSIDERED TO BE AN OWNER OR OPERATOR.—
''(A) IN GENERAL.—A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real
H. R. 2869—14
property that is not owned by that person shall not be

considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) solely by reason of the contamination if—
''(i) the person did not cause, contribute, or consent to the release or threatened release;
''(ii) the person is not—
''(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or
''(II) the result of a reorganization of a business entity that was potentially liable;
''(iii) the person takes reasonable steps to—
''(I) stop any continuing release;
''(II) prevent any threatened future release; and
''(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;
''(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);
''(v) the person—
''(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and
''(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;
''(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this Act;
''(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and
''(viii) at the time at which the person acquired the property, the person—
''(I) conducted all appropriate inquiry within the meaning of section 101(35)(B) with respect to the property; and
''(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.
H. R. 2869—15
''(B) DEMONSTRATION.—To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been

met.
''(C) BONA FIDE PROSPECTIVE PURCHASER.—Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 101(40) if the person is otherwise described in that section.
''(D) GROUND WATER.—With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.
''(2) EFFECT OF LAW.—With respect to a person described in this subsection, nothing in this subsection—
''(A) limits any defense to liability that may be available to the person under any other provision of law; or
''(B) imposes liability on the person that is not otherwise imposed by subsection (a).
''(3) ASSURANCES.—The Administrator may—
''(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and
''(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f).''.

SEC. 222. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION OF BONA FIDE PROSPECTIVE PURCHASER.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 211(a) of this Act) is amended by adding at the end the following:
''(40) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person (or a tenant of a person) that acquires ownership of a facility after the date of the enactment of this paragraph and that establishes each of the following by a preponderance of the evidence:
''(A) DISPOSAL PRIOR TO ACQUISITION.—All disposal of hazardous substances at the facility occurred before the person acquired the facility.
''(B) INQUIRIES.—
''(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

''(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.
''(iii) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no

basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

''(C) NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

''(D) CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

''(i) stop any continuing release;

''(ii) prevent any threatened future release; and

''(iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

''(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

''(F) INSTITUTIONAL CONTROL.—The person—

''(i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

''(ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

''(G) REQUESTS; SUBPOENAS.—The person complies with any request for information or administrative subpoena issued by the President under this Act.

''(H) NO AFFILIATION.—The person is not—

''(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—

''(I) any direct or indirect familial relationship; or

''(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

''(ii) the result of a reorganization of a business entity that was potentially liable.''.

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by this Act) is further amended by adding at the end the following:

H. R. 2869—17

''(r) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

''(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a)(1), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

''(2) LIEN.—If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each

of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.
''(3) CONDITIONS.—The conditions referred to in paragraph (2) are the following:
''(A) RESPONSE ACTION.—A response action for which there are unrecovered costs of the United States is carried out at the facility.
''(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.
''(4) AMOUNT; DURATION.—A lien under paragraph (2)—
''(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;
''(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;
''(C) shall be subject to the requirements of subsection (l)(3); and
''(D) shall continue until the earlier of—
''(i) satisfaction of the lien by sale or other means; or
''(ii) notwithstanding any statute of limitations under section 113, recovery of all response costs incurred at the facility.''.

SEC. 223. INNOCENT LANDOWNERS.

Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended—
(1) in subparagraph (A)—
(A) in the first sentence, in the matter preceding clause (i), by striking ''deeds or'' and inserting ''deeds, easements, leases, or''; and
(B) in the second sentence—
(i) by striking ''he'' and inserting ''the defendant''; and
(ii) by striking the period at the end and inserting '', provides full cooperation, assistance, and facility access to the persons that are authorized to conduct
H. R. 2869—18
response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.''; and
(2) by striking subparagraph (B) and inserting the following:
''(B) REASON TO KNOW.—
''(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—
''(I) on or before the date on which the defendant

acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

''(II) the defendant took reasonable steps to—

''(aa) stop any continuing release;

''(bb) prevent any threatened future release; and

''(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

''(ii) STANDARDS AND PRACTICES.—Not later than 2 years after the date of the enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

''(iii) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

''(I) The results of an inquiry by an environmental professional.

''(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

''(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

''(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

''(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

''(VI) Visual inspections of the facility and of adjoining properties.

''(VII) Specialized knowledge or experience on the part of the defendant.

''(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

''(IX) Commonly known or reasonably ascertainable information about the property.

''(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

''(iv) INTERIM STANDARDS AND PRACTICES.—

''(I) PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to property purchased before

May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account—
''(aa) any specialized knowledge or experience on the part of the defendant;
''(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;
''(cc) commonly known or reasonably ascertainable information about the property;
''(dd) the obviousness of the presence or likely presence of contamination at the property; and
''(ee) the ability of the defendant to detect the contamination by appropriate inspection.
''(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as 'Standard E1527–97', entitled 'Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process', shall satisfy the requirements in clause (i).
''(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.''.
H. R. 2869—20

Subtitle C—State Response Programs

SEC. 231. STATE RESPONSE PROGRAMS.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by this Act) is further amended by adding at the end the following:
''(41) ELIGIBLE RESPONSE SITE.—
''(A) IN GENERAL.—The term 'eligible response site' means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.
''(B) INCLUSIONS.—The term 'eligible response site' includes—
''(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986; or
''(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 128 at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will—
''(I) protect human health and the environment; and

''(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.
''(C) EXCLUSIONS.—The term 'eligible response site' does not include—
''(i) a facility for which the President—
''(I) conducts or has conducted a preliminary assessment or site inspection; and
''(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or
''(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.''.
(b) STATE RESPONSE PROGRAMS.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:
H. R. 2869—21
''SEC. 128. STATE RESPONSE PROGRAMS.
''(a) ASSISTANCE TO STATES.—
''(1) IN GENERAL.—
''(A) STATES.—The Administrator may award a grant to a State or Indian tribe that—
''(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or
''(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.
''(B) USE OF GRANTS BY STATES.—
''(i) IN GENERAL.—A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.
''(ii) ADDITIONAL USES.—In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—
''(I) capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or
''(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.
''(2) ELEMENTS.—The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:
''(A) Timely survey and inventory of brownfield sites in the State.
''(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—
''(i) a response action will—
''(I) protect human health and the environment;

and
''(II) be conducted in accordance with
applicable Federal and State law; and
''(ii) if the person conducting the response action
fails to complete the necessary response activities,
including operation and maintenance or long-term
monitoring activities, the necessary response activities
are completed.
''(C) Mechanisms and resources to provide meaningful
opportunities for public participation, including—
''(i) public access to documents that the State,
Indian tribe, or party conducting the cleanup is relying
on or developing in making cleanup decisions or conducting
site activities;
''(ii) prior notice and opportunity for comment on
proposed cleanup plans and site activities; and
''(iii) a mechanism by which—
''(I) a person that is or may be affected by
a release or threatened release of a hazardous
substance, pollutant, or contaminant at a
brownfield site located in the community in which
H. R. 2869—22
the person works or resides may request the conduct
of a site assessment; and
''(II) an appropriate State official shall consider
and appropriately respond to a request under
subclause (I).
''(D) Mechanisms for approval of a cleanup plan, and
a requirement for verification by and certification or similar
documentation from the State, an Indian tribe, or a licensed
site professional to the person conducting a response action
indicating that the response is complete.
''(3) FUNDING.—There is authorized to be appropriated to
carry out this subsection $50,000,000 for each of fiscal years
2002 through 2006.
''(b) ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO STATE
PROGRAM.—
''(1) ENFORCEMENT.—
''(A) IN GENERAL.— Except as provided in subparagraph
(B) and subject to subparagraph (C), in the case of an
eligible response site at which—
''(i) there is a release or threatened release of
a hazardous substance, pollutant, or contaminant; and
''(ii) a person is conducting or has completed a
response action regarding the specific release that is
addressed by the response action that is in compliance
with the State program that specifically governs
response actions for the protection of public health
and the environment,
the President may not use authority under this Act to
take an administrative or judicial enforcement action under
section 106(a) or to take a judicial enforcement action to
recover response costs under section 107(a) against the
person regarding the specific release that is addressed by
the response action.
''(B) EXCEPTIONS.—The President may bring an
administrative or judicial enforcement action under this
Act during or after completion of a response action
described in subparagraph (A) with respect to a release
or threatened release at an eligible response site described
in that subparagraph if—

''(i) the State requests that the President provide assistance in the performance of a response action;
''(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;
''(iii) after taking into consideration the response activities already taken, the Administrator determines that—
''(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and
H. R. 2869—23
''(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or
''(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.
''(C) PUBLIC RECORD.—The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) shall maintain and make available to the public a record of sites as provided in this paragraph.
''(D) EPA NOTIFICATION.—
''(i) IN GENERAL.—In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—
''(I) notify the State of the action the Administrator intends to take; and
''(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

''(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.
''(ii) STATE REPLY.—Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if—
''(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and
''(II) the State is planning to abate the release or threatened release, any actions that are planned.
''(iii) IMMEDIATE FEDERAL ACTION.—The Administrator may take action immediately after giving

notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.
''(E) REPORT TO CONGRESS.—Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).
''(2) SAVINGS PROVISION.—
''(A) COSTS INCURRED PRIOR TO LIMITATIONS.—Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to the date of the enactment of this section or during a period in which the limitations of paragraph (1)(A) were not applicable.
''(B) EFFECT ON AGREEMENTS BETWEEN STATES AND EPA.—Nothing in paragraph (1)—
''(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this Act between a State agency or an Indian tribe and the Administrator that is in effect on or before the date of the enactment of this section (which agreement shall remain in effect, subject to the terms of the agreement); or
''(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.
''(3) EFFECTIVE DATE.—This subsection applies only to response actions conducted after February 15, 2001.
''(c) EFFECT ON FEDERAL LAWS.—Nothing in this section affects any liability or response authority under any Federal law, including—
''(1) this Act, except as provided in subsection (b);
''(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
''(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
''(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
''(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).''.

SEC. 232. ADDITIONS TO NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended by adding at the end the following:

''(h) NPL DEFERRAL.—

''(1) DEFERRAL TO STATE VOLUNTARY CLEANUPS.—At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that—

''(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site—

H. R. 2869—25

''(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

''(ii) that will provide long-term protection of human health and the environment; or

''(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

''(2) PROGRESS TOWARD CLEANUP.—If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

''(3) CLEANUP AGREEMENTS.—With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on—

''(A) the complexity of the site;

''(B) substantial progress made in negotiations; and

''(C) other appropriate factors, as determined by the President.

''(4) EXCEPTIONS.—The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that—

''(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

''(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

H. R. 2869—26

''(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.''.

Speaker of the House of Representatives.
Vice President of the United States and
President of the Senate.